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FILED

AUG 12 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES *ex rel.* CHRISTOPHER C.
MURPHY and DAVID SWANSON, et al.,

Plaintiffs,

v.

ACTELION, LTD., et al.,

Defendant.

No. C 10-1402 EDL

**UNITED STATES' NOTICE OF
ELECTION TO DECLINE
INTERVENTION; ~~PROPOSED~~
ORDER TO UNSEAL**

FILED UNDER SEAL

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States hereby
notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C.
§ 3730(b)(1), which allows the relators to bring an action in the name of the United States;

1 providing, however, that the “action may be dismissed only if the court and the Attorney General
2 give written consent to the dismissal and their reasons for consenting.” Id. The United States
3 Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United
4 States only has the right to a hearing when it objects to a settlement or dismissal of the action.
5 U.S. ex rel. Green v. Northrop Corp., 59 F.3d 953, 959 (9th Cir. 1995); U.S. ex rel. Killingsworth
6 v. Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994).

7 Therefore, the United States requests that, should either the relators or the defendant propose
8 that this action be dismissed, settled, or otherwise discontinued, this Court provide the United
9 States with notice and an opportunity to be heard before ruling or granting its approval.
10 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings
11 filed in this action be served upon the United States. The United States also requests that orders
12 issued by the Court be sent to the Government's counsel. The United States reserves its rights to
13 order any deposition transcripts, and to intervene in this action, for good cause, at a later date,
14 and to seek the dismissal of the relators' action or claim. The United States also requests that it
15 be served with all notices of appeal.

16 Finally, the United States requests that the applications and stipulations filed by the United
17 States with the Court during the seal period remain under seal and not be made public or served
18 upon the defendant.

19 A proposed order accompanies this notice.

20 DATED: August 9, 2013

Respectfully submitted,

21 MELINDA HAAG
22 United States Attorney

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25 STEVEN J. SALTIEL
26 Assistant United States Attorney
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~~PROPOSED~~ ORDER TO UNSEAL

1. All sealed contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendant, except for the Complaint, First Amended Complaint, and proposed amendments thereto, this Order, and the accompanying United States' Notice of Election to Decline Intervention, which are hereby unsealed.

2. Unless the relators voluntarily dismiss this action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, they shall serve the Complaint, this Order and the accompanying Notice of Election to Decline Intervention upon the defendant.

3. The seal is lifted as to all matters occurring in this action after the date of this Order.

4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

5. The parties shall serve all notices of appeal upon the United States.

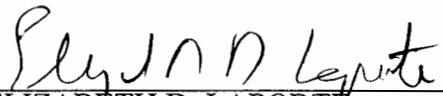
6. All orders of this Court shall be sent to the United States.

7. Should the relators or the defendant propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated:

August 12, 2013


ELIZABETH D. LAPORTE
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED]
ORDER TO UNSEAL**

to be served this date upon each of the persons indicated below at the addresses shown:

W. Scott Simmer, Esq.
Alan M. Freeman, Esq.
BLANK ROME LLP
600 New Hampshire Avenue, NW
Washington, D.C. 20037

☒ **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be delivered by hand to the person or offices of each addressee above.

☐ **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the person or offices of each addressee above.

☐ **BY E-MAIL:** I caused each such document to be sent by e-mail to the person or offices of each address above

☐ **BY FEDERAL EXPRESS**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed August 12, 2013 at San Francisco, California


KATHY TERRY
Legal Assistant